

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals } of
RONALD G. DOE and ROBERT C. AND
LAURA PICKING }

For Appellants: Jack Lopin, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Ronald G. Doe against a proposed assessment of additional personal income tax in the amount of \$2,507.15 for the year 1955, and of Robert C. and Laura Picking against a proposed assessment of additional personal income tax in the amount of \$2,525.20 for the year 1955.

The sole issue raised by these appeals concerns the date of termination of a partnership, *for purposes of determining* the year in which the partners' distributive shares of partnership income are properly included in their gross income. "Because of the identity of facts and legal principles involved, the two appeals are combined for purposes of this opinion.

Appellants Ronald G. Doe and Robert C. Picking were sole partners in the operation of the Celeste Construction Company, a building development firm. On August 1, 1955, appellants agreed to dissolve their partnership. On that date appellant Picking began the operation of a sole proprietorship under the name of Celeste Construction Company, the same name as the partnership. He carried on that business from premises formerly occupied by the partnership and utilized furniture, fixtures and vehicles which had belonged to the partnership. On September 1, 1955, appellant Doe also started his own

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business, using vehicles which had been the property of the partnership and operating from premises which it had owned. On November 18, 1955, appellant-Doe incorporated his business under the name of Ronald G. Doe Company, Inc.

On September 30, 1955, entries were made in the partnership books showing the distribution to appellants of virtually all vehicles and real estate owned by the partnership. Appellant Doe transferred his share of these assets to the corporation which he had formed. Additional partnership assets were sold in late 1955, and before the end of that year, each partner received assets with a net worth of \$203,078.03.

The only evidence of partnership assets remaining after 1955 is a bank account which remained open into 1956 under the name of Celeste Construction Company. On January 1, 1956, the balance in that account was \$96.27 and on March 30, 1956, it was \$175.74. During the month of April of that year, \$1,500.00 was deposited and appellant Doe wrote two checks on the account totalling \$1,600.00. The disbursements from the account were made in settlement of liabilities which had been incurred by the partnership. The account was finally closed on June 20, 1956.

Although a partnership is *not* itself a taxpayer, it does have a taxable year for purposes of computing the income taxable to the individual partners. (Rev. & Tax. Code, § 17862.) Appellants' partnership had a taxable year ending January 31, 1955, while appellants filed their individual income tax returns on a calendar year basis.

Appellants reported their distributive shares of partnership income for the fiscal year ended January 31, 1955, in their 1955 individual returns. All income subsequently earned was reported in their 1956 returns. Respondent determined that the partnership terminated in 1955, and that appellants therefore should have included the partnership income which they reported in 1956 in their 1955 income. This adjustment resulted in respondent's assertion of deficiencies in tax due for 1955.

The computation of the income of a partner for a given taxable year is based on the partnership income for any taxable year of the partnership ending within or with the taxable year of the partner. (Rev. & Tax. Code, § 17861.) An existing partnership shall be considered as continuing if it is not terminated. (Rev. & Tax. Code, § 17867, subd. (a).) A partnership shall be considered as terminated, thereby closing its taxable year, if "No part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership...." (Rev. & Tax. Code, § 17867, subd. (b)(1)(A).) Regulations promulgated in connection with section 17867 of the Revenue and Taxation Code provide that a partnership is not "terminated;" for purposes of determining its final taxable year, until the winding up of partnership affairs is completed. (Cal. Admin. Code, tit. 18, reg. 17867,

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subds. (b)(1)(i) and (b)(1)(iii)(a).)

Respondent contends that appellants' partnership was "terminated" in 1955 when the partnership assets and liabilities were distributed to appellants and they began operating their own businesses using the assets formerly owned by the partnership. Respondent urges that the payments made by Mr. Doe during 1956 from the bank account formerly, carried by the partnership were in satisfaction of pre-existing liabilities of the partnership which Mr. Doe had assumed in late 1955, at the time of the final accounting. Therefore, it is argued, those disbursements by Mr. Doe were not a part of the winding up of partnership affairs.

Appellants allege that, as partners, they both made deposits into the above mentioned bank account in 1956 and both had the authority to draw checks on it in payment of obligations incurred by the partnership. Appellants also allege that during 1956 the partnership conducted negotiations with subcontractors and transacted business with the federal government regarding employment taxes.

The above allegations, if supported by either documentary or testimonial evidence, would aid appellants in establishing the continued existence of the partnership into 1956. No such substantiating evidence appears in the record. A bank statement contained therein indicates that on April 13, 1956, \$1,500.00 was deposited in the account which was carried under the name of the partnership. In support of appellants' allegation that each partner deposited one-half of that amount, evidencing their continued activity as partners, they have submitted a photostatic copy of one \$750.00 check dated April 12, 1956, payable to Celeste Construction Company and signed by Ronald G. Doe. Though this check tends to establish Mr. Doe's contribution to the account, it does not prove that the remaining \$750.00 was deposited by the other partner, Mr. Picking. The record also contains copies of two checks drawn on the account on April 12, 1956, presumably payable to creditors of the partnership. Both checks were signed by Mr. Doe. Though other deposits and disbursements were allegedly made by both partners in 1956, they have offered no proof of those transactions. Nor is there any evidence to substantiate the other business transactions alleged by appellants to have been carried, on by the partnership in 1956.

Mr. Doe's use of the bank account in the name of Celeste Construction Company would have been a convenient means of paying debts of the former partnership which were assumed by him.. All of the evidence bearing upon the identity of the person who made the deposits and disbursements shows

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that they were made by Mr. Doe, and appellants have produced no evidence that is inconsistent with respondent's contention that Mr. Doe made them as an individual, pursuant to a settlement agreement reached by the partners at the time of a final accounting in 1955.

Upon the record before us we must conclude that appellants have failed to sustain their burden of proving that the Celeste Construction Company, continued to exist as a partnership in 1956. Respondent therefore properly included their distributive shares of the partnership income for the, final year of its existence, 1955, in appellants' individual income for 1955.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Ronald G. Doe against a proposed assessment of additional personal income tax in the amount of \$2,507.15 for the year 1955, and of Robert C. and Laura Picking against a proposed assessment of additional personal income tax in the amount of \$2,525.20 for the year 1955, be, and the same is hereby sustained.

Done at Pasadena, California, this 5th day of April, 1965, by the State Board of Equalization.

John W. Lynch, Chairman
Robert H. Jones, Member
Paul R. L. L. L., Member
Richard C. L. L., Member
✓, Member

Attest [Signature], Secretary